

1 RON E. SHULMAN, State Bar No. 178263  
2 ROGER J. CHIN, State Bar No. 184662  
3 JENNIFER KOH, State Bar No. 238653  
4 WILSON SONSINI GOODRICH & ROSATI  
5 Professional Corporation  
6 650 Page Mill Road  
7 Palo Alto, CA 94304-1050  
8 Telephone: (650) 493-9300  
9 Facsimile: (650) 565-5100  
10 Email: rchin@wsgr.com

11 Attorneys for Plaintiff  
12 IMPAX LABORATORIES, INC.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16 IMPAX LABORATORIES, INC.,

17 Plaintiff,

18 v.

19 MEDICIS PHARMACEUTICAL CORP.,

20 Defendant.

CASE NO.: C08-0253-MMC

**[PROPOSED] ORDER DENYING  
MEDICIS'S MOTION TO DISMISS**

21 Having considered Medicis's Motion to Dismiss (Docket No. 17), and the papers  
22 submitted in support of and in opposition to the motion, the motion is DENIED.

23 The Court finds that Impax's submission of an Abbreviated New Drug Application for  
24 a generic version of Solodyn<sup>®</sup>, Medicis's threats of suing generic competitors of Solodyn<sup>®</sup> for  
25 patent infringement, and Medicis's refusal to provide Impax with a covenant not to sue,  
26 demonstrate under all the circumstances that "there is a substantial controversy, between parties  
27 having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a  
28 declaratory judgment." *MedImmune, Inc. v. Genentech, Inc.*, 127 S. Ct. 764, 771 (2007).

The Court further finds that the objectives for which the Declaratory Judgment Act  
was created are served by hearing Impax's declaratory judgment action, and therefore, the

1 Court's adjudication of this declaratory judgment action is appropriate. *See Micron Tech., Inc. v.*  
2 *MOSAID Techs., Inc.*, \_\_ F.3d \_\_, 2008 WL 540182, at \*4 (Fed. Cir. Feb. 29, 2008).

3 IT IS SO ORDERED.

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5  
6 Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Maxine M. Chesney  
United States District Judge